

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PUSHPA GUPTA and GOPI KRISHNA GUPTA

CV 10-4312
COMPLAINT

Plaintiffs,

Civ No.:

-against-

ALEC MICHAEL DANIELLO, an infant by his
Father and Guardian, JOHN G. DANIELLO, and
JOHN G. DANIELLO, Individually.

**PLAINTIFFS DEMAND
TRIAL BY JURY ON ALL
ISSUES**

Defendants.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ SEP 22 2010 ★

-X
BROOKLYN OFFICE

BIANCO, J.

Plaintiffs, PUSHPA GUPTA and GOPI KRISHNA GUPTA, by their attorneys
MARSHALL, CONWAY, WRIGHT & BRADLEY, P.C., as and for their VERIFIED
COMPLAINT, respectfully allege and show to this Honorable Court upon information
and belief as follows:

WALL, M.J.

JURISDICTION

1. That at all times hereinafter mentioned the Plaintiffs, PUSHPA GUPTA and GOPI KRISHNA GUPTA, were and still are citizens of India, residing at 24/50 Birhana Road, Kandum, Uttar Pradesh, India.

2. That at all times hereafter mentioned the Defendants, ALEC MICHAEL DANIELLO, an infant by his Father and Guardian JOHN G. DANIELLO, and JOHN G. DANIELLO, Individually, were and still are residents of Holbrook, New York, residing in Suffolk County.

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1332, in that complete diversity of citizenship exists between the Plaintiffs and Defendants and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) and (c) in that the Defendants reside in this District.

AS AND FOR THE FIRST CAUSE OF ACTION

(Negligence)

5. That on the 20th day of August 2010, the defendant, JOHN G. DANIELLO was the owner of a 2010 Jeep Liberty automobile bearing New York license plate number DSF5023 for the year 2010.

6. That on the 20th day of August 2010, the Defendant, ALEC MICHAEL DANIELLO, an infant by his Father and Guardian JOHN G. DANIELLO, (hereinafter "ALEC MICHAEL DANIELLO"), used and operated the aforementioned motor vehicle.

7. That on the 20th day of August 2010, the Defendant, ALEC MICHAEL DANIELLO, used and operated the aforementioned motor vehicle with the permission and consent of the owner of the vehicle, JOHN G. DANIELLO, whether express or implied.

8. That on the 20th day of August 2010, Plaintiffs PUSHPA GUPTA and GOPI KRISHNA GUPTA, were pedestrians walking along the sidewalk on Greenbelt Parkway West, at or near the intersection with Whitehall Court, County of Suffolk, State of New York.

9. That at all times hereinafter mentioned, Greenbelt Parkway West, at or near the intersection with Whitehall Court, County of Suffolk, State of New York was and still is a public roadway.

10. That on the 20th day of August, 2010, the motor vehicle owned by the Defendant, John G. Daniello was being operated upon Greenbelt Parkway West, at or about its intersection with Whitehall Court, County of Suffolk, State of New York.

11. That on the 20th day of August 2010, upon Greenbelt Parkway West, at or about its intersection with Whitehall Court, County of Suffolk, State of New York, the vehicle owned by the defendant, JOHN G. DANIELLO, was being operated with his permission and consent express or implied by the defendant, ALEC MICHAEL DANIELLO.

12. That on the aforementioned date, and at the aforementioned location, the Defendant, ALEC MICHAEL DANIELLO lost control of the subject motor vehicle causing the vehicle to careen to the opposite side of the street and up onto the sidewalk.

13. That on the aforementioned date, and at the aforementioned location, the vehicle owned by the defendant, JOHN G. DANIELLO, and driven by the Defendant, ALEC MICHAEL DANIELLO, came into contact with the Plaintiff, PUSHPA GUPTA.

14. That on the aforementioned date, and at the aforementioned location, the vehicle owned by the defendant, JOHN G. DANIELLO, and driven by the Defendant, ALEC MICHAEL DANIELLO, struck the Plaintiff, PUSHPA GUPTA.

15. That as a result of the foregoing, the Plaintiff, PUSHPA GUPTA, sustained serious, severe, and permanent personal injuries, resulting in pain and suffering.

16. That the contact between the motor vehicle owned by the Defendant, JOHN G. DANIELLO, and driven by the Defendant, ALEC MICHAEL DANIELLO, and the Plaintiff, PUSHPA GUPTA, was caused by the negligence and recklessness of the defendants in their ownership, operation, use, maintenance, and control of the

aforesaid motor vehicle without any fault or want of care of the Plaintiffs contributing thereto.

17. That as a result of the foregoing, the plaintiff, PUSHPA GUPTA sustained serious injuries as defined in Section 5102(d) of the Insurance Law of the State of New York.

18. That as a result of the foregoing, the plaintiff, PUSHPA GUPTA, sustained economic loss greater than basic economic loss, as defined in subsection (a) of section five thousand one hundred two of the Insurance Law of the State of New York.

19. That this action falls within one of the exemptions set forth under Article 16 of the CPLR, including but not limited to the exemptions set forth in Section 1602 including 1602(6).

20. That as a result of the foregoing, the plaintiff, PUSHPA GUPTA has been damaged in the sum of **TWENTY FIVE MILLION (\$25,000,000.00) DOLLARS.**

AS AND FOR THE SECOND CAUSE OF ACTION

(Negligent Infliction of Emotional Distress)

21. Plaintiffs repeat, reiterate, and reallege each and every allegation of the Plaintiffs' VERIFIED COMPLAINT, numbered and designated "1" through "20" with the same force and effect as it more fully set forth herein.

22. That on the 20th day of August 2010 the Plaintiff, GOPI KRISHNA GUPTA, was walking on the sidewalk adjacent to Greenbelt Parkway West at or about its intersection with Whitehall Court, County of Suffolk, State of New York, with his wife, Plaintiff, PUSHPA GUPTA.

23. As the Plaintiffs, PUSHPA GUPTA and GOPI KRISHNA GUPTA were walking on the sidewalk, the motor vehicle owned by the Defendant, JOHN G. DANIELLO, and operated by the Defendant, ALEC MICHAEL DANIELLO, crossed over the lane of traffic and rode up onto the sidewalk striking the Plaintiff, PUSHPA GUPTA.

24. That on the aforementioned date, and at the aforementioned location, as the motor vehicle struck the Plaintiff, PUSHPA GUPTA, she began to scream from the intense physical pain.

25. As a result of the motor vehicle striking PUSHPA GUPTA, she was severely injured and required immediate medical attention.

26. Plaintiff, GOPI KRISHNA GUPTA, witnessed his wife being injured and suffered extreme emotional distress. He, himself, was in the zone of danger.

27. Due to the negligence and recklessness of both Defendants, Plaintiff, GOPI KRISHNA GUPTA suffered severe emotional distress, fright, and pain from watching his wife get seriously injured.

28. That on the 20th day of August 2010, the Defendants, ALEC MICHAEL DANIELLO and JOHN G. DANIELLO, by their above-stated actions, negligently inflicted emotional distress on Plaintiff, GOPI KRISHNA GUPTA, who was lawfully on a public sidewalk.

29. Plaintiff, GOPI KRISHNA GUPTA, witnessed his wife being run over and was in the zone of danger himself. As a direct and proximate result of the above negligence, GOPI KRISHNA GUPTA suffered extreme emotional distress resulting in emotional and physical injury.

30. That as a result of the foregoing, the plaintiff, GOPI KRISHNA GUPTA has been damaged in the sum of **FIVE MILLION (\$5,000,000.00) DOLLARS**.

AS AND FOR THE THIRD CAUSE OF ACTION

(Loss of Consortium)

31. Plaintiffs repeat, reiterate, and reallege each and every allegation of the Plaintiffs' VERIFIED COMPLAINT, numbered and designated "1" through "30" with the same force and effect as it more fully set forth herein.

32. That at all times hereinafter mentioned, the Plaintiff, GOPI KRISHNA GUPTA, was the husband of the Plaintiff, PUSHPA GUPTA.

33. That at all times hereinafter mentioned, the Plaintiff GOPI KRISHNA GUPTA was entitled to the joy, comfort, services and society of his aforementioned wife.

34. As a direct and proximate result of the carelessness and negligence of the Defendants, as set forth above, the Plaintiff, GOPI KRISHNA GUPTA , as husband of the Plaintiff, PUSHPA GUPTA has suffered consequential damages and has been deprived of his wife's full society, care, comfort, companionship, services, and has otherwise suffered a loss of consortium.

35. That as a result of the foregoing the Plaintiff, GOPI KRISHNA GUPTA, has been damaged in the amount of **ONE MILLION (\$1,000,000.00) DOLLARS**.

WHEREFORE, Plaintiffs demand judgment against the Defendants in the sum of TWENTY FIVE MILLION (\$25,000,000.00) DOLLARS on the FIRST CAUSE OF ACTION set forth in the Complaint, FIVE MILLION (\$5,000,000.00) DOLLARS on the SECOND CAUSE OF ACTION; and ONE MILLION (\$1,000,000.00) DOLLARS on

the THIRD CAUSE OF ACTION, together with interest, costs and disbursements of this action.

Dated: New York, New York
September 20, 2010



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